

103D CONGRESS  
1ST SESSION

# S. 612

To protect the privacy of telephone users by amending section 3121 of title 18, United States Code.

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## IN THE SENATE OF THE UNITED STATES

MARCH 18 (legislative day, MARCH 3), 1993

Mr. KOHL (for himself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To protect the privacy of telephone users by amending section 3121 of title 18, United States Code.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Telephone Privacy Act  
5       of 1993”.

6       **SEC. 2. PURPOSES.**

7       The purposes of this Act are—

8               (1) to protect the right to privacy of telephone  
9       users by enabling them to limit the dissemination of

1       their telephone numbers to persons of their choos-  
2       ing;

3           (2) to encourage the use of new services which  
4       discourage harassing and obscene telephone calls  
5       even though information identifying the caller may  
6       be blocked; and

7           (3) to require government entities to give public  
8       notice of their use of caller identification service.

9       **SEC. 3. AMENDMENT OF TITLE 18, UNITED STATES CODE.**

10       (a) PROHIBITIONS.—Section 3121 of title 18, United  
11       States Code, is amended to read as follows:

12       **“§ 3121. General prohibition on pen register and trap**  
13               **and trace device use; exceptions**

14       “(a) IN GENERAL.—Except as provided in this sec-  
15       tion, no person may install or use a pen register or a trap  
16       and trace device without first obtaining a court order  
17       under section 3123 of this title or under the Foreign Intel-  
18       ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

19       “(b) EXCEPTIONS.—(1)(A) Subject to paragraph (2),  
20       the prohibition of subsection (a) does not apply with re-  
21       spect to the installation or use of a pen register or a trap  
22       and trace device by a provider of electronic or wire com-  
23       munication service—

24               “(i) relating to the operation, maintenance, or  
25       testing of a wire or electronic communication service

1 or to the protection of the rights or property of such  
2 provider, or to the protection of users of that service  
3 from abuse of service or unlawful use of service;

4 “(ii) to record the fact that a wire or electronic  
5 communication was initiated or completed in order  
6 to protect such provider, another provider furnishing  
7 service toward the completion of the wire commu-  
8 nication, or a user of that service, from fraudulent,  
9 unlawful or abusive use of service;

10 “(iii) with the prior consent of the recipient of  
11 the communication when the communication may be  
12 relevant to an ongoing criminal or counterintel-  
13 ligence investigation;

14 “(iv) in connection with the provision of call re-  
15 turn service; or

16 “(v) in connection with the provision of caller  
17 identification service to a user of that service, if the  
18 service provider—

19 “(I) permits the recipient of a communica-  
20 tion to use call trace; and

21 “(II) permits the originator of a commu-  
22 nication to block caller identification—

23 “(aa) on a per call basis without  
24 charge;

1 “(bb) on a per line basis with or with-  
2 out charge, in a State in which it is au-  
3 thorized by statute or regulation prior to  
4 the date of enactment of this clause, and  
5 at the request of the originator; and

6 “(cc) on a per line basis without  
7 charge at the request of an originator that  
8 is a victim of domestic violence protected  
9 by court order, a victim’s service program,  
10 or a battered women’s shelter or other or-  
11 ganization providing safe haven for victims  
12 of domestic violence.

13 “(B) Subparagraph (A) (iv) and (v) shall not be con-  
14 strued to require a provider of electronic or wire commu-  
15 nication service to enable an originator of a communica-  
16 tion to block caller identification—

17 “(i) on the emergency assistance telephone line  
18 of a Federal, State, or municipal police or fire de-  
19 partment or on a 911 emergency line;

20 “(ii) on calls within a customer’s system; or

21 “(iii) of a communication made from a public  
22 pay telephone.

23 “(2) The exception afforded by paragraph (1) does  
24 not apply to a communication to a governmental entity  
25 on a line that is publicized or represented as ensuring the

1 confidentiality of the originator of a communication, such  
2 as an anonymous tip line or a confidential information  
3 line.

4 “(3) The prohibition of subsection (a) does not apply  
5 with respect to the use of information that a subscriber  
6 to an automatic number identification service or charge  
7 number service receives, to the extent that the use consists  
8 of—

9 “(A) use for billing and collection, routing,  
10 screening, and completion of the originating tele-  
11 phone subscriber’s call or transaction, or for services  
12 directly related to the originating telephone subscrib-  
13 er’s call or transaction;

14 “(B) reuse or sale after the recipient orally no-  
15 tifies the originator of the recipient’s desire to reuse  
16 or sell the information and extends to the originator  
17 an option to limit or prohibit such reuse or sale;

18 “(C) use for the purposes of—

19 “(i) performing a service or transaction  
20 that is the subject of the communication;

21 “(ii) ensuring the quality of network per-  
22 formance, the maintenance of security, or the  
23 effectiveness of call delivery;

24 “(iii) compiling, using, or disclosing aggre-  
25 gate information;

1           “(iv) complying with law or a court order;

2           or

3           “(v) offering to an originator of a commu-  
4           nication with which the recipient has an estab-  
5           lished customer relationship a product or serv-  
6           ice that is directly related to products or serv-  
7           ices that the originator has previously obtained  
8           from the recipient of the communication; or

9           “(D) use for any lawful purpose if there is  
10          available to the originator of the communication the  
11          ability to block caller identification to the recipient—

12           “(i) on a per call basis without charge; or

13           “(ii) on a per line basis with or without  
14          charge in a State in which it is authorized by  
15          statute or regulation prior to the date of enact-  
16          ment of this clause and offered in combination  
17          with blocking on a per call basis without  
18          charge.

19          “(4) Nothing in paragraph (3) affects the provision  
20          or use of automatic number identification or charge num-  
21          ber information by a provider of electronic or wire commu-  
22          nication service.

23          “(c) CIVIL ACTION.—(1) An originator of a commu-  
24          nication that is aggrieved by the knowing or intentional  
25          failure of a provider of communication service to allow

1 blocking of caller identification as described in subsection  
2 (b)(1)(A)(v) may recover from the provider in accordance  
3 with section 2707.

4 “(2) An originator of a communication that is ag-  
5 grieved by the knowing or intentional use of caller identi-  
6 fication information by the recipient of the communication  
7 in violation of subsection (b)(3) may recover from the re-  
8 cipient in accordance with section 2707.

9 “(d) CRIMINAL PENALTY.—(1) Whoever knowingly  
10 violates subsection (a) shall be fined under this title or  
11 imprisoned not more than one year, or both.

12 “(2) Paragraph (1) does not apply to the use of infor-  
13 mation that is made available to the recipient of a commu-  
14 nication through an automatic number identification or  
15 charge number service.

16 “(e) PREEMPTION.—Notwithstanding any other pro-  
17 vision of law, no State may prohibit, in any way other than  
18 in accordance with subsections (a) and (b), the making  
19 available by providers of electronic or wire communication  
20 services or the use by their customers of caller identifica-  
21 tion service.

22 “(f) INTENT OF CONGRESS.—This section is intended  
23 neither to endorse nor to facilitate the use of blocking of  
24 caller identification by originators of obscene or harassing

1 telephone calls, nor is it intended to limit the enforcement  
2 of laws prohibiting such telephone calls.”.

3 (b) DEFINITIONS.—Section 3127 of title 18, United  
4 States Code, is amended—

5 (1) by striking “and” at the end of paragraph  
6 (5);

7 (2) by striking the period at the end of para-  
8 graph (6) and inserting a semicolon; and

9 (3) by adding at the end the following new  
10 paragraphs:

11 “(7) the term ‘automatic number identification  
12 or charge number’ means an access signaling proto-  
13 col in common use by common carriers that uses an  
14 identifying signal associated with the use of a sub-  
15 scriber’s telephone to provide billing information or  
16 other information to the local exchange carrier or  
17 any other interconnecting carriers;

18 “(8) the term ‘block’ means to prevent or con-  
19 trol, and the term ‘blocking’ means a service that al-  
20 lows the originator of a call to prevent or control,  
21 the transmission of information that identifies the  
22 originator to the recipient of the call;

23 “(9) the term ‘caller identification’ means the  
24 transmission of information that identifies the origi-



1 nator of a wire communication to the recipient of  
2 the communication;

3 “(10) the term ‘call return service’ means a  
4 service provided to a user of a communication line  
5 that enables a recipient of a communication on that  
6 line to initiate a return communication to the origi-  
7 nator without disclosing to the recipient the identity  
8 of the originator (except in connection with the pro-  
9 vider’s regular billing process); and

10 “(11) the term ‘call trace service’ means a serv-  
11 ice provided to a user of a communication line that  
12 enables a recipient of a communication on that line  
13 to cause the identity of the originator of the commu-  
14 nication to be disclosed to the service provider’s se-  
15 curity personnel and to law enforcement officials  
16 without disclosing to the recipient the identity of the  
17 originator.”.

18 **SEC. 4. NOTICE BY GOVERNMENT ENTITIES OF USE OF**  
19 **CALLER IDENTIFICATION SERVICE.**

20 (a) **FEDERAL ENTITIES.**—A Federal Government en-  
21 tity that uses caller identification service shall publish in  
22 the Federal Register and have printed in any phone direc-  
23 tory in which its number is listed, for the guidance of the  
24 public, notice of the government entity’s use of caller iden-  
25 tification service within a reasonable time after initiating

1 that use. The Federal Register notice shall describe the  
2 scope and purpose of that use.

3 (b) STATE AND LOCAL ENTITIES.—A State or local  
4 government entity that uses caller identification service  
5 shall make available and publish in the official publication  
6 of that State or local government entity and have printed  
7 in any phone directory in which its number is listed, for  
8 the guidance of the public, notice of that government enti-  
9 ty's use of caller identification service within a reasonable  
10 time after initiating that use. The official publication no-  
11 tice shall describe the scope and purpose of that use.

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